obtained from him illegally, is not inconsistent, however, with that already set forth, for each theory presents a distinct and adequate basis for recovery. But the suggested theory of express trust is not restricted in its scope to cases of illegality.

WHAT CONSTITUTES SUFFICIENT CONNECTION WITH THE FAMILY TO RENDER ADMISSIBLE THE DECLARATIONS OF A DECEASED PERSON CONCERNING PEDIGREE. — The weight of authority now has clearly established that declarations as to pedigree are not admissible unless made by a deceased member of the family.[1] And unless the declarant is speaking of facts in his own life which bear on pedigree,[2] he must be connected with the family in advance by evidence independent of his own statements.[3] The cases, however, are in some confusion in determining what foundation must be laid to render admissible the declarations of a member of one family that another member thereof is related to a different family. Several cases appear to decide, either directly or indirectly, that the declarant must be connected with both families.[4] A somewhat obscure sentence in Greenleaf is sometimes cited to the same effect;[5] but the authority of this is greatly weakened by a sentence directly *contra* on the same page.[5] On the other hand, there are cases which hold that it is sufficient to show declarant's connection with one family;[6] and Wigmore strongly supports this view.[7] A late case now raises the question again, and, after considering both lines of authority, squarely decides that to connect the declarant either by blood or by marriage with the person who has died seised is unnecessary, if the declarant be shown to be related to the alleged heir. *Overby* v. *Johnston*, 94 S. W. Rep. 131 (Tex. Civ. App.).

The question at hand really goes to the basis of the "pedigree" exception to the hearsay exception. Hearsay, though relevant, is excluded on the theory that its persuasive effect on the jury is likely to exceed its probative effect on the case.[8] It is difficult to show when such evidence is incorrect or self-serving. But in the case of pedigree, hearsay is admitted because of the difficulty of obtaining better evidence; yet, as a check to incorrectness, most courts yield to necessity only to the extent of admitting the declarations of relatives.[1] But for the sake of correctness there seems no need that the declarant should be shown to be connected with both families. A statement by a Smith that the Roe family is connected with the Smith family not only touches the Roe pedigree, to which the Smiths are *prima facie* strangers, but it equally touches the Smith pedigree, on which the Smiths are entitled to speak. As a check on self-serving declarations, the courts now admit only those made *ante litem motam*.[8] But though this restriction effectively excludes evidence manufactured for

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[1] Johnson *v.* Lawson, 2 Bing. 86; Waldron *v.* Tuttle, 4 N. H. 371. *Contra*, Alston *v.* Alston, 114 Ia. 29.

[2] Allen *v.* Hall, 2 Nott & McC. (S. C.) 114.

[3] Young *v.* Schulenberg, 165 N. Y. 385; Falkerson *v.* Holmes, 117 U. S. 389.

[4] Hitchins *v.* Eardley, L. R. 2 P. & D. 248. See Blackburn *v.* Crawfords, 3 Wall. (U. S.) 175; Doe d. Dunlop *v.* Servos, 5 U. C. Q. B. 284.

[5] Greenleaf, Ev., 16 ed., 198.

[6] Vowles *v.* Young, 13 Ves. Jr. 140; Monkton *v.* Atty.-General, 2 Russ. & M. 147; Sitler *v.* Gehr, 105 Pa. St. 577; Gehr *v.* Fisher, 143 Pa. St. 311.

[7] 2 Wigmore, Ev., § 1491.

[8] Berkeley Peerage Case, 4 Camp. 401.

the case at bar, it clearly does not keep out all self-serving declarations. If the Roes are rich, and the Smiths are poor, there is an obvious inducement to the Smiths to claim kinship with the Roes even before any controversy arises. The rule which requires connection with both families would certainly discourage a good many unscrupulous claims; but it would equally exclude an admission of relationship with the Smiths by one of the Roes. The great objection to such a rule, however, is that it requires an absurdity. If the plaintiff must show that the declarant Smith is connected with the Roes before the declarations can be admitted, he is in effect compelled to prove his own connection with the Roes in order to get in the very evidence he relies on to establish that connection, — except in such an unusual case as where the individual declarant's declarations might be admissible on the Roe pedigree by reason of the declarant Smith having married into that family. A rule which makes such an impractical requirement is scarcely desirable, and the case at hand is to be welcomed as an added authority against it.

OWNERSHIP IN A PLAN. — In the early law there was considerable dispute among the authorities on the question of ownership in intellectual creations. One view, earnestly advocated by Lord Mansfield, among others, was that intellectual creations were property like other species of property and belonged absolutely to their creator.[1] The other theory was that the producer of an intellectual work had no natural property therein and enjoyed only such rights as the public chose to confer.[2] The latter theory is the one that has come to prevail in the law today. A late case follows this view in deciding that the originator of a scheme of industrial organization has no right of property in it. *Haskins* v. *Ryan*, 64 Atl. Rep. 436 (N. J. Eq.).

We may take it as settled that an author, painter, or composer has no common law property right in his mental creation after he has given it to the public, or, in the technical phrase, has "published" it. Any one may reproduce it or use it as he sees fit.[3] To be sure, until publication, the creator has over it sole control;[4] but this control does not depend on any property right in the creation, though doubtless there is in the cases loose language which might lead to that conclusion.[5] It is universally admitted that a person to whom the author or composer communicates his work may make what use he pleases of the knowledge so gained, except to multiply copies of the work.[6] This right of "copy" is impliedly reserved by the author in any communication short of publication, and for the recipient of the communication to reproduce the mental creation would be unfair and a breach of confidence.[6] The creator's right, then, would seem to be not a property right in the creation, but the incorporeal right of "copy."[7] As regards inventions, there is no doubt that any one who by fair means gains

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1 Millar *v.* Taylor, 4 Burr. 2303, 2399.
2 Donaldson *v.* Beckit, 2 Bro. P. C. 129.
3 Keene *v.* Kimbal, 16 Gray (Mass.) 545.
4 N. J. State Dental Society *v.* Dentacura Co., 57 N. J. Eq. 593.
5 See Aronson *v.* Baker, 43 N. J. Eq. 365; Grigsby *v.* Breckinridge, 2 Bush (Ky.) 480.
6 See Tompkins *v.* Halleck, 133 Mass. 32.
7 See Jefferys *v.* Boosey, 4 H. L. Cas. 815, 888.